IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5957 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J M PARIKH

Versus

DIRECTOR OF GEOLOGY & MINING

Appearance:

1. Special Civil Application No. 5957 of 1993

MR PRANAV G BHATT for Petitioner No. 1

Mr. K.P. Raval for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 25/08/2004

ORAL JUDGEMENT

1.1 The petitioner, by way of this petition, has challenged the inaction on the part of the State

Government in not giving him promotion by not maintaining the ratio/quota properly for the direct recruits and the promotees. A prayer is also made for a direction to the respondents to promote the petitioner to the post of Geologist from the date since when his name was in the select list for promotion and pay him the arrears of difference of pay.

2.1 The petitioner was initially appointed as Geological Assistant on 1-2-1959 in the erstwhile Bombay State, and thereafter,on bifurcation of the State of Gujarat, he was absorbed by the Gujrat Government and was promoted as Assistant Geologist on 14-2-1965 and subsequently he came to be reverted as Geological Assistant for administrative reasons. Ultimately, he was again promoted as Assistant Geologist on regular basis with effect from 22-3-1968 and retired in that capacity on attaining the age of superannuation on 31-3-1993.

2.2 It is the case of the petitioner that since 1968 the seniority list for the post of Assistant Geologists was finalized only in the year 1992 and till then temporary seniority lists were published without maintaining the ratio/quota of promotees and direct recruits properly, resulting which, he retired as an Assistant Geologist despite having worked for 25 years. According to the petitioner, his two juniors Mr.A.K.Bhatnagar and Mr.D.D.Patel were promoted as Geologist in 1979. The petitioner had made representations to the Secretary and the Director of the department on 31-3-1980 and 5-3-84 respectively to which there was no response.

2.3 It is further the case of the petitioner that after he was promoted as Assistant Geologist with effect from 22-3-1968 a provisional seniority list of the cadre showing the name of the petitioner at Sr.no.7, came to be published which reflected the position as on 1-10-1971 whereas his said juniors were shown at Sr.no.8 and 10. Subsequently after publishing some revised and tentative seniority list on 11-6-82, 14-10-1986 and 30-5-1990, a final seniority list was published in May 1992 whereupon the petitioner again made representations to the concerned authorities, but of no avail.

2.4 The petitioner has also averred that there was no stigma to his long service of 25 years. According to him, though his name figured in the select list for promotion to the post of Geologist, he has been deprived of his promotion without any just and valid reason. It is his case that the Deputy Secretary vide letter dated

8-6-1993 replied to his representation dated 13-4-1993 explaining that the petitioner was not given promotion for want of necessary approval, and therefore, the petitioner though being eligible was not promoted and retired on superannuation in the cadre of Assistant Geologist, and hence, the present petition.

3.1 The respondents have appeared and filed their affidavit-in-reply dated 16th September, 1993 denying the averments made in the petition. According to the respondents, the petitioner was not promoted earlier because he was not found fit by the Departmental Committee on 16-11-71 and 4-9-1978. Again on 12-4-1985, the petitioner's name was included in the select list as per final seniority list published on 11-5-1982 for promotion to the post of Geologist, Class I. However, in view of the directions issued by the High Court in SCAs nos.185/83 and 5361/90, the Government could not promote the petitioner. Finally, on 17th June, 1992 the petitioners case for promotion was considered as per final seniority list of Asstt. Geologists dt.6-5-1992 and the petitioner having been found fit, his name was forwarded to the Gujarat Public Service Commission for approval on 24-1-1993. Ultimately, on 22nd October, 1993 approval was granted by the GPSC.

4.1 In the background of the facts and situation as narrated above, I am of the view that the petitioner is entitled to promotion to the post of Geologist,(Class I) and he is required to be paid all consequential benefits with effect from 24-1-1993 i.e. the date on which his name was recommended by the State Government pursuant to the meeting held on 17th June, 1992 and the subsequent approval granted by the GPSC on 22nd October, 1993 or from the date on which other persons referred to in the order dated 22nd October, 1993 are given the promotion and benefits.

5.1 In the result, the petition is partly allowed. The respondents are directed to pay to the petitioner all consequential benefits including retiral benefits treating the petitioner as promoted to the post of Geologist, (Class I), with effect from 24-1-1993 or from the date on which other persons referred to in the order dated 22nd October, 1993, by effecting refixation of his pay. This exercise should be done within four months from the date of receipt of this order. Rule is made absolute to the aforesaid extent.

(K.S.Jhaveri,J.)

stanley-ksj.